IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1987 OF 2006

MANASI KAMAL RESHAMWALA)
residing at Flat No.1, Gr.Floor)
Jyoti Shivram Housing Society)
Devidayal Road, Mulund West)
Mumbai 400 080.) .. PETITIONER

Versus

1. THE STATE OF MAHARASHTRA)
Through the Secretary to the)
Govt. of Maharashtra, Home)
Department, Mantralaya)
MUMBAI 400 032)

2. CHANDRA IYENGAR)
Principal Secretary)
(Appeals and Security))
Government of Maharashtra)
Home Department and Detaining
Authority, Mantralaya,)
Mumbai 400 032.)

3. THE SUPERINTENDENT OF PRISON)
The Mumbai Central Prison)
Arthur Road, Mumbai.)

4. THE SUPERINTENDENT OF PRISON)
Nashik Road, Central Prison,)
Nashik.) .. RESPONDENTS

Mr. Maqsood Khan for petitioner

Mr. D. S. Mhaispurkar, APP

CORAM:-SMT. RANJANA DESAI &
D. B. BHOSALE, JJ.

DATED:-4/6/2007

ORAL JUDGMENT:-(Smt. Ranjana Desai, J.)

. The petitioner is the wife of one Kamal Rohit Reshamwala ("detenu" for convenience), who is detained under the order of detention dated 17/8/06 issued by the 2nd respondent, Principal Secretary (Appeals and Security), Government of Maharashtra, under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ("COFEPOSA Act" for convenience), with a view to preventing him in future from smuggling goods. The order of detention along with the grounds of detention and material in support thereof was served on the detenu when he was in judicial custody, on or about 17/8/06. In this petition, the petitioner has challenged the said order.

2. From the grounds of detention it appears that the case of the detaining authority in short is that in November, 2005, the detenu attempted to smuggle 2400 pieces of RAM cards but was unsuccessful as the said consignment was seized by Air Intelligence Unit of Customs CSI, Mumbai. This consignment was sent by Shri Vijay Ramchandra

Panchal, who had also given the detenu a sum of Rs.9,50,000/- through Hawala for the provisional release of the goods through customs on executing a bank guarantee for Rs.9,50,000/-. The detenu was successful in smuggling of 900 pieces of electronic components under Airway Bill No.20-032-527-815 with the help of Vijay Ramchandra Panchal and Rajesh Krishna Gothal.

3. On the basis of the material placed before the detaining authority, the detaining authority was satisfied that the detenu had been found in indulging in the smuggling of RAM memory cards in India without declaring them to the customs and his acts of commission and omission had rendered the seized goods liable for confiscation. The detaining authority was satisfied that the detenu's smuggling activities fall under Section 111(d) and (o) of the Customs Act, 1962. The detaining authority was further satisfied that considering the nature and gravity of the offence and the well organized manner in which the detenu had engaged in prejudicial activities unless detained he was likely to continue to indulge in similar prejudicial activities in future and, therefore, it was necessary to detain him under the COFEPOSA Act,

with a view to preventing him in future from smuggling goods. The detaining authority, therefore, issued the impugned order.

4. We have heard Mr. Maqsood Khan, learned counsel appearing for the petitioner and Mr. Mhaispurkar, learned APP for the respondents.

5. Mr. Khan, the learned counsel for the petitioner assailed the impugned order on several counts. However, it is not necessary for us to deal with all his contentions because his contention that the continued detention of the detenu is rendered illegal on account of the delay on the part of the detaining authority in considering the detenu's representation is well founded. We shall, therefore, deal with that submission.

6. Mr. Khan submitted that the petitioner had addressed representation dated 7/10/06 to the Advisory Board, copy of which was endorsed to the detaining authority, the State Government and to the Central Government. Mr. Khan submitted that there is a delay in considering the said representation. It came to be rejected by the

detaining authority on 28/12/06. Mr. Khan pointed out that the representation was received in the Home Department on 10/10/06. Parawise comments were called from the Sponsoring Authority on 12/10/06. The Sponsoring Authority submitted the parawise comments on 16/10/06. They were received in the Home Department on 17/10/06. However, the representation was disposed of by the detaining authority on 17/11/06. Rejection reply was sent to the detenu on 28/11/06. Mr. Khan submitted that the detaining authority has not offered any explanation as to why the detenu's representation was not considered from 17/10/06 to 17/11/06. He submitted that in view of this unexplained delay the continued detention of the detenu must be set aside. In support of this submission Mr. Khan relied on an unreported judgment of the Supreme Court in **Writ Petition (Cri.) No. 138 of 2006 delivered on 2/11/06, Harshala Santosh Patil v. State of Maharashtra & Ors.**

7. As against this Mr. Mhaispurkar, learned APP submitted that the detaining authority as well as the sponsoring authority have explained the delay. He took us through the affidavits of the detaining authority and the affidavit filed on behalf of the

sponsoring authority. He submitted that the explanation offered in the affidavits is proper and acceptable and hence no case is made out for declaring the continued detention of the detenu illegal.

8. There is no dispute about the fact that the petitioner's representation is dated 7/10/06. The affidavit of the detaining authority indicates that the said representation was received in the department on 10/10/06. It appears that the concerned Assistant prepared the note on 11/10/06 and forwarded the file to the Under Secretary, who put his endorsement on 12/10/06 and forwarded the file to the Deputy Secretary. It is further stated in the affidavit that the Deputy Secretary put his endorsement on the same day and thereafter parawise remarks were called from the sponsoring authority vide letter dated 12/10/06. According to the detaining authority the parawise comments were received in the department on 13/11/06, vide sponsoring authority's letter dated 10/11/06. The detaining authority has further stated that thereafter the concerned Assistant prepared a detailed note on 16/11/06 and forwarded the file to the Under Secretary, who put his endorsement on

17/11/06.

9. According to the detaining authority, thereafter the file along with the representation and parawise remarks was placed before her. After going through the same she rejected the representation on the same day i.e. on 17/11/06. 19/11/06 was a holiday. Rejection reply was issued on 20/11/06 and it was received by the detenu on 21/11/06.

10. On behalf of the sponsoring authority affidavit has been filed by Dr. T. Tiju, Deputy Director, Directorate of Revenue Intelligence (DRI), Mumbai, to explain the time taken to send parawise comments. In his affidavit he has stated that in respect of the representation dated 7/10/06 addressed to the detaining authority, the parawise remarks of the sponsoring authority were called for vide letter dated 12/10/06. The said letter was received by DRI on 16/10/06. Parawise comments on the same were forwarded by the sponsoring authority on 16/10/06. It is stated that thereafter sponsoring authority received another letter dated 9/11/06 from the detaining authority asking parawise comments on the points raised in the

representation and thereafter again parawise comments were forwarded vide letter dated 10/11/06. Therefore, according to the sponsoring authority parawise comments were forwarded by it to the detaining authority as far back as on 16/10/06. If that is so then the detaining authority should have disposed of the representation immediately thereafter. Instead the detaining authority has disposed of the representation after one month i.e. on 17/11/06. To explain this, again additional affidavit has been filed by the detaining authority. In this affidavit the detaining authority has stated that initially parawise comments were called for from the sponsoring authority vide letter dated 12/10/06 and in response to the same the sponsoring authority forwarded the parawise comments vide letter dated 16/10/06. It is further stated that the said remarks were received in the department on 17/10/06. However, the said parawise remarks were found to be a copy of the parawise remarks sent by the sponsoring authority in respect of the present writ petition. Therefore, the letter dated 16/10/06 received from the sponsoring authority was marked to the concerned Assistant and it was kept under writ petition file. The sponsoring authority

was thereafter reminded again to send parawise remarks on the representation on all the points vide Government letter dated 9/11/06. The sponsoring authority forwarded parawise remarks vide letter dated 10/11/06 which were received in the Home Department on 13/11/06 and thereafter the said representation was processed and it was rejected on 17/10/06. It is further stated that during the said period 14/10/06 and 15/10/06 were holidays being Saturday and Sunday, 21/10/06 to 25/10/06 were holidays on account of Diwali. 20/10/06 was a holiday on account of Idd and 29/10/06, 5/11/06, 11/11/06 and 12/11/06 were holidays on account of Saturday and Sunday.

11. In our opinion, this additional affidavit does not help the detaining authority. The detaining authority has admitted that vide letter dated 16/10/06, the Sponsoring Authority had forwarded parawise comments. The forwarding letter of the sponsoring authority has been produced before us by Mr. Mhaispurkar, APP. It refers to letter dated 12/10/06 by which parawise comments on the representation were called for. The letter clearly states that on behalf of the detenu Mrs. Mansi Kamal Reshamwala has filed Criminal Writ Petition

No. 1987 of 2006 on the same ground. The letter further states that parawise comments on the same have already been forwarded to the State Government vide DRI letter dated 4/10/06. It is further stated that similar parawise comments in the prescribed proforma alongwith the floppy are annexed herewith for further necessary action. This letter makes it clear that the sponsoring authority had sent parawise comments on the instant writ petition to the State Government. There is no dispute about the fact that the same grounds which are agitated in the writ petition have been raised in the representation dated 7/10/06. In its letter dated 16/10/06, therefore, the sponsoring authority made it clear that on 4/10/06 itself parawise comments on the writ petition have been forwarded to DRI; that representation dated 7/10/06 and the writ petition contained the same grounds and hence similar parawise comments in the prescribed proforma along with the floppy are being sent for necessary action. It appears that nobody at the Government level bothered to read this letter properly. Instead the sponsoring authority was again asked to send parawise comments by letter dated 9/11/06. This exercise was absolutely unnecessary. This itself shows non-application of

mind on the part of the detaining authority. Instead of considering the parawise comments sent vide letter dated 16/10/06, the detaining authority unnecessarily waited for fresh parawise comments. The sponsoring authority in pursuance to the request made by the detaining authority appears to have again forwarded parawise comments vide letter dated 10/11/06. Those parawise comments were received in the department on 13/11/06 and thereafter the representation was decided on 17/11/06. Thus the detaining authority has shown an utterly casual approach. Though parawise comments were on the file of the State Government unnecessarily parawise comments were called for without properly reading the letter dated 16/10/06 sent by the sponsoring authority which was received in the department on 17/10/06. This has resulted in unexplained delay of one month in disposing of the representation. There is absolutely no explanation for the time taken to dispose of the representation from 17/10/06 to 17/11/06. In our opinion, this delay is fatal to the continued detention of the detenu.

12. We feel that the reliance placed by Mr. Khan on the judgment of the Supreme Court in **Harshala**

Santosh Patil's case (supra) is apt. In that case the representation of the detenu was received in the Home Department on 12/4/06. The said representation was sent to the concerned section on 13/4/06. In the affidavit the detaining authority had stated that 14/4/06 was a holiday. On 15/4/06 the concerned Assistant of the Section submitted the proposal for approval to call for the comments of the sponsoring authority. 16/4/06 was holiday. On 18/4/06 the detaining authority granted approval, called for remarks of the sponsoring authority and on the same day letter along with the copy of the representation made by the petitioner was sent to the sponsoring authority. The comments of the sponsoring authority were received on 21/4/06. According to the detaining authority 22nd and 23rd of April, 2006 were holidays. The detaining authority had further stated in the affidavit that she considered the representation in detail also in the light of the comments of the sponsoring authority. She had further stated that as the representation made by the petitioner was in detail and it contained references to number of judgments, copies of the which were attached. According to the detaining authority after considering the judgments and remarks of the

sponsoring authority, the detaining authority rejected the representation on 29/4/06. 30/4/06 and 1/5/06 were holidays, hence rejection reply was communicated to the detenu on 2/5/06.

13. Having considered the statements made in the affidavits, the Supreme Court was inter alia of the opinion that although the comments of the sponsoring authority had been called as back as on 15/4/06 and they were received on 24/4/06, the detaining authority failed to apply its mind till 29/4/06. The Supreme Court expressed that it was not satisfied that having regard to the nature of the representation made by the detenu and/or reliance having been placed upon several judgments as also the remarks of the sponsoring authority, the detaining authority was required to take five days to consider the representation. In the circumstances, the Supreme Court ordered the release of the detenu.

14. In our opinion the facts of the present case are gross. In this case there is unexplained delay of one month. A casual and careless approach is exhibited by the detaining authority in calling for parawise comments when the parawise comments were

already forwarded to the State Government. Therefore, in our opinion continued detention of the detenu is rendered illegal. The detenu must, therefore, be ordered to be released forthwith unless he is required in any other case. Hence the following order:

. The continued detention of the detenu Kamal Rohit Reshamwala, under the order of detention dated 17/8/2006 issued by the Principal Secretary (Appeals and Security) Government of Maharashtra, Home Department and Detaining Authority is declared to be illegal and hence detenu Kamal Rohit Reshamwala is ordered to be released forthwith unless he is otherwise required in any other case.

JUDGE.

JUDGE.